

## REMARKS

This is a full and timely response to the outstanding non-final Office Action mailed April 4, 2006. Through this response, claims 1, 37, and 78 have been amended. Reconsideration and allowance of the application and pending claims are respectfully requested.

### **I. Claim Rejections - 35 U.S.C. § 102(e)**

#### **A. Statement of the Rejection**

Claims 1-4, 9, 24, 26, 30, 31, 34, 37-40, 45, 60, 62, 66, 67, 70, 73, 74, and 76-79 have been rejected under 35 U.S.C. § 102(e) as being allegedly anticipated by *Ellis et al.* ("*Ellis*," U.S. Pub. No. 2002/0042913). Claims 1-3, 5-7, 10-18, 25, 28, 29, 37-39, 41-43, 46-54, 61, 64, 65, 80, and 81 have been rejected under 35 U.S.C. § 102(e) as being allegedly anticipated by *Rodriguez et al.* ("*Rodriguez*," U.S. Pub. No. 2005/0071882). Applicant respectfully traverses these rejections.

#### **B. Discussion of the Rejection**

It is axiomatic that "[a]nticipation requires the disclosure in a single prior art reference of each element of the claim under consideration." *W. L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 1554, 220 USPQ 303, 313 (Fed. Cir. 1983). Therefore, every claimed feature of the claimed invention must be represented in the applied reference to constitute a proper rejection under 35 U.S.C. § 102(e).

### Examination Using *Ellis* reference

In the present case, not every feature of the claimed invention is represented in the *Ellis* reference. Applicant discusses the *Ellis* reference and Applicant's claims in the following.

### Independent Claim 1

Claim 1 recites (with emphasis added):

1. A method for providing improved availability of purchasable recordable media content downloaded from a remote server, said method comprising the steps of:

***providing a download option to a user, the download option comprising an indication of when the purchasable recordable media content may be downloaded;*** and

updating the download option proximately in time to when a change in download resources changes the availability of the download option.

Applicant respectfully submits that *Ellis* does not at least disclose, teach, or suggest the above-emphasized claim features. It is also unclear from the Office Action what features of *Ellis* constitutes the download option. The Office Action makes reference to Figures 1, 12, and 13 of *Ellis*. Assuming *arguendo* the titled icons (e.g., "The Color Purple") in Figure 12 each constitute a download option (the admission of which is neither expressed or implied), such titled icons do not comprise ***an indication of when the purchasable recordable media content may be downloaded.*** Thus, Applicant respectfully requests that the rejection to independent claim 1 be withdrawn.

Because independent claim 1 is allowable over *Ellis*, dependent claims 2-36 are allowable as a matter of law for at least the reason that the dependent claims 2-36 contain all

elements of their respective base claim. See, e.g., *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988).

Additionally, as pertaining to claim 4, Applicant respectfully disputes the allegation on page 3 of the Office Action that the unavailability of media due to bandwidth constraints is inherent in any VOD-like system, since unavailability may be due to other factors such as technical difficulties, among others. “To establish inherency, the extrinsic evidence ‘must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.’” *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999)

### **Independent Claim 37**

Claim 37 recites (with emphasis added):

37. A media system for providing improved availability of purchasable recordable media content downloaded from a remote server, said media system comprising:

a memory with logic; and

***a processor configured with the logic to provide a download option to a user, the download option comprising an indication of when the purchasable recordable media content may be downloaded***, wherein the processor is further configured with the logic to update the download option proximately in time to when a change in download resources changes the availability of the download option.

For similar reasons presented above in association with independent claim 1, Applicant respectfully submits that *Ellis* does not at least disclose, teach, or suggest the above-emphasized claim features. Accordingly, Applicant respectfully requests that the rejection to independent claim 37 be withdrawn.

Because independent claim 37 is allowable over *Ellis*, dependent claims 38-75 are allowable as a matter of law.

#### **Independent Claim 76**

Claim 76 recites (with emphasis added):

76. A method for providing improved availability of purchasable recordable media content downloaded from a remote server, said method comprising the steps of:

providing download options to a user;

***adding a new download option proximately in time to when a portion of download resources are freed up;***

omitting one of the download options proximately in time to when the download resources are insufficient to support the omitted download option; and

providing alternate download options after one of the download options has been selected but the download resources are insufficient to support the selected download option.

The Office Action refers to the analysis of claims 1, 4, and 31 to support the rejection of claim 76. Applicant respectfully disagrees with the rejection and the allegation that claims 1, 4, and 31 cover the features of claim 76, since none of claims 1, 4, nor 31 recite the above emphasized claim features. Since claim 76 has not been adequately analyzed for purposes of examination, Applicant respectfully requests that the rejection be withdrawn, and that the Office address all of the limitations of claim 76 (and dependent claim 77 which incorporates the limitations of claim 76) in the next action which Applicant respectfully submits should be non-final.

#### **Independent Claim 78**

Claim 78 recites (with emphasis added):

78. A media system for providing improved availability of purchasable recordable media content downloaded from a remote server, said media system comprising:

a memory with logic; and  
a processor configured with the logic to provide download options to a user, *wherein the processor is further configured with the logic to add a new download option proximately in time to when a portion of download resources are freed up*, wherein the processor is further configured with the logic to omit one of the download options proximately in time to when the download resources are insufficient to support the omitted download option, wherein the processor is further configured with the logic to provide alternate download options after one of the download options has been selected but the download resources are insufficient to support the selected download option.

The Office Action alleges that “claim 78 corresponds to claim 76” and that “it is analyzed and rejected as previously discussed.” For similar reasons presented above in association with claim 76, Applicant respectfully requests that the rejection be withdrawn, and that the Office address all of the limitations of claim 78 (and dependent claim 79 which incorporates the limitations of claim 78) in the next action which Applicant respectfully submits should be non-final.

#### **Examination Using *Rodriguez* reference**

With regard to the *Rodriguez* reference, although Applicant does not agree that *Rodriguez* discloses, teaches, or suggests the subject matter of claims 1-3, 5-7, 10-18, 25, 28, 29, 37-39, 41-43, 46-54, 61, 64, 65, 80, and 81, Applicant has nonetheless included for incorporation with this response a 1.132 declaration to expedite allowance of the present application. As provided in the declaration, Mr. Arturo Rodriguez, as sole inventor of the present application and co-inventor of the *Rodriguez* reference, unequivocally declares that he conceived or invented the subject matter disclosed in the *Rodriguez* reference and relied on in the 102(e) rejection of claims 1-3, 5-7, 10-18, 25, 28, 29, 37-39, 41-43, 46-54, 61, 64, 65, 80, and 81 in the present application. Accordingly, Applicant respectfully

requests that the *Rodriguez* reference be withdrawn as an anticipatory reference, and that the rejection to claims 1-3, 5-7, 10-18, 25, 28, 29, 37-39, 41-43, 46-54, 61, 64, 65, 80, and 81 be withdrawn. Further, any assertions of inherency used in conjunction with the *Rodriguez* reference are hereby traversed, and in fact, believed to be rendered moot in view of the unavailability of the *Rodriguez* reference.

Due to the shortcomings of the *Ellis* reference and the unavailability of the *Rodriguez* reference as an anticipatory reference as described in the foregoing, Applicant respectfully requests that the rejection of these claims be withdrawn.

## **II. Claim Rejections - 35 U.S.C. § 103(a)**

### **A. Statement of the Rejection**

Claims 8, 19-23, 44, 55-59, and 75 have been rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over *Ellis*. Claims 27, 32, 33, 63, 68, and 69 have been rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over *Ellis* in view of *Haddad* ("*Haddad*," U.S. Pat. No. 5,555,441). Claims 35 and 71 have been rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over *Ellis* in view of *Hooper et al.* ("*Hooper*," U.S. Pat. No. 5,414,455). Claims 36 and 72 have been rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over *Ellis* in view of *Greenwood et al.* ("*Greenwood*," U.S. Pat. No. 5,568,181). Applicant respectfully traverses these rejections.

### **B. Discussion of the Rejection**

As has been acknowledged by the Court of Appeals for the Federal Circuit, the U.S. Patent and Trademark Office ("USPTO") has the burden under section 103 to establish a

*prima facie* case of obviousness by showing some objective teaching in the prior art or generally available knowledge of one of ordinary skill in the art that would lead that individual to the claimed invention. *See In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). The Manual of Patent Examining Procedure (MPEP) section 2143 discusses the requirements of a *prima facie* case for obviousness. That section provides as follows:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teaching. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and reasonable expectation of success must be found in the prior art, and not based on applicant's disclosure.

In the present case, Applicant respectfully submits that a *prima facie* case for obviousness has not been established.

**Claims 8, 19-23, 44, 55-59, and 75**

With regard to the finding of well-known art and Official Notice as directed to claims 8, 19-23, 44, 55-59, and 75, Applicant respectfully traverses these findings and submits that the subject matter pertaining to these claims should not be considered well-known. With regard to claims 8, 19-23, 44, and 55-59, there is no suggestion or teachings of periodic updating of network schedules or alerting users as to completion of downloads in *Ellis* or the other art of record. For instance, *Ellis* is concerned with "building media lists...in which media may be tagged, listed, and subsequently accessed," (see Abstract) and thus is simply not directed to the features of network scheduling or alerting users as to completion of downloads. As provided in MPEP § 2144.03:

Official notice without documentary evidence to support an examiner's conclusion is permissible only in some circumstances. While "official notice" may be relied on, these circumstances should be rare when an application is under final rejection or action under 37 CFR 1.113. Official notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known. As noted by the court in *In re Ahlert*, 424, F.2d 1088, 1091, 165 USPQ 418, 420 (CCPA 1970), the notice of facts beyond the record which may be taken by the examiner must be "capable of such instant and unquestionable demonstration as to defy dispute" (citing *In re Knapp Monarch Co.*, 296 F.2d 230, 132 USPQ 6 (CCPA 1961)).

As provided in MPEP § 2144.03 (emphasis added):

If applicant adequately traverses the examiner's assertion of official notice, *the examiner must provide documentary evidence in the next Office action* if the rejection is to be maintained. See 37 CFR 1.104(c)(2).

Applicant respectfully submits that in the context of the claim language, such a finding of well-known art is improper given the reasons above, including the added complexity associated with such features as described in claims 8, 19-23, 44, 55-59, and further including claim 75. Accordingly, Applicant traverses the assertions with regard to well-known use. Because of this traversal, the Office must support its findings with evidence, or withdraw the well-known determination.

**Claims 27, 32, 33, 63, 68, and 69**

Applicant respectfully submits that the proposed combination of *Ellis* in view of *Haddad* is not obvious. For instance, one indicia of unobviousness recognized by the Federal Circuit and the USPTO pertains to the absence of a motivation to combine



references. Page 11 of the Office Action offers the following reasoning for the combination:

Accordingly, it would have been obvious to one having ordinary skill in this art at the time of Applicant's invention to combine the systems of Ellis and Haddad in order to provide a system which allows a user wider download flexibility.

Applicant respectfully disagrees, and believes that, at least in view of the disparate systems and problems to be solved in *Ellis* and *Haddad*, such a proposed combination is more likely the result of improper hindsight reasoning. Federal case law makes it clear that an obviousness analysis requires an "as a whole" assessment, which Applicant respectfully submits has not been performed in the instant case. In particular, *Princeton Biochemicals Inc. v. Beckman Coulter Inc.*, 75 U.S.P.Q.2d. 1051, 1054 (Fed. Cir. 2005) makes it clear that "[T]itle 35, section 103, requires assessment of the invention as a whole. This "as a whole" assessment of the invention requires a showing that an artisan of ordinary skill in the art at the time of the invention, confronted by the same problems as the inventor and with no knowledge of the claimed invention, would have selected the various elements from the prior art and combined them in the claimed manner."

Applying to the present application, one problem to address concerns the issue of failure to receive purchasable recordable media (PRM) in a dependable manner. The background of *Ellis* (paragraphs 0003 and 0004) provides the following explanation with regard to some problems in the conventional art (emphasis added):

While watching television, users may, for example, see commercials or other promotions for media on a regular television channel, on a passive guide television channel, on a barker channel, on an interactive program guide display (or other interactive television application display), on an Internet Web site, or on other types of visual display. Typically, while

surfing Internet Web sites, users may see advertisements for other Web sites and other Web content. Additionally, users may obtain information about products that may be shown as part of the normal course of action in movies, television shows or programming.

[0004] In known conventional systems, it is difficult for users to later find and access such promotional materials subsequent to the original presentation of the promotional material. For example, a user who is in the midst of searching for a particular channel may notice an advertisement for a movie that the user may wish to purchase on a pay-per-view channel at a future time. To access information on the pay-per-view movie, the user may need to abandon the current search for the channel which may cause the user to lose track of the progress in the search. Thus, branching to different advertisements or promotions in such known systems may typically result in a number of different branches being pursued that are never successfully completed.

*Ellis* appears to address this problem through the use of “media lists...in which media may be tagged, listed, and subsequently accessed.” (see Abstract) On the other hand, *Haddad* provides the following explanation of some deficiencies in the conventional art in column 1, line 65 through column 2, line 5 (emphasis added):

Therefore, there exists a need for an audiovisual delivery system that is efficient for the program distributor while accommodating the individual needs of each subscriber. More particularly, a system capable of handling subscriber requests of several time allowance intervals within which program segments will be delivered. The program distributor accumulates like orders and has the option and capability to fill each of these like orders simultaneously. The subscriber is subsequently able to manipulate and view segments or an entire delivered program.

*Haddad* appears to address this problem through the use of a system that “provides for subscribers not only to have unlimited access to a program library, but also to select variable time allowance intervals for each program requested.” (see Abstract) Clearly *Ellis* and *Haddad* address distinct problems using distinct solutions. Through the proposed combination of *Ellis* in view of *Haddad*, Applicant is effectively being asked to accept that one having ordinary skill in the art would have approached a problem, such as

failure to receive purchasable recordable media in a dependable manner, by combining such disparate systems and problems to be addressed as described in *Ellis* and *Haddad*. Applicant respectfully submits that such a combination is improper for at least the reason that such an assessment fails to implement an “as a whole” inquiry, and ultimately, fails to provide a proper motivation to combine. As was made clear in *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 1549, 220 U.S.P.Q. 193 (Fed. Cir, 1983), “[T]hat features, even distinguishing features, are 'disclosed' in the prior art is alone insufficient. As above indicated, it is common to find elements or features somewhere in the prior art. Moreover, most if not all elements perform their ordained and expected function. The test is whether the claimed invention as a whole, in light of all the teachings of the references in their entireties, would have been obvious to one of ordinary skill in the art at the time the invention was made.” Applicant respectfully submits that such a showing has not been made, and thus Applicant respectfully requests that the rejection to claims 27, 32, 33, 63, 68, and 69 be withdrawn.

#### **Claims 35 and 71**

With regard to the findings of well-known art and Official Notice, Applicant respectfully traverses these findings and submits that the subject matter pertaining to these claims should not be considered well-known. For instance, there is no suggestion or teachings of portable medium drives in *Ellis* or *Hooper*. *Ellis* is concerned with “building media lists...in which media may be tagged, listed, and subsequently accessed,” (see Abstract) and *Hooper* is concerned with “distributing videos” that are “stored on a mass storage device.” (see Abstract) Thus, there is simply no teachings or suggestions found in *Ellis* or *Hooper* that are directed to portable medium drives. The reference to

*Hassell et al.* (*Hassell*, U.S. Patent Publication No. 2004/0128685) in the Office Action on page 12 is of no relevance for at least the reason that *Hassell* post-dates the filing date of the present application by approximately two years. Applicant respectfully submits that in the context of the claim language, such a finding of well-known art is improper given the reasons above, including the added complexity associated with such features as described in claims 35 and 71. Accordingly, Applicant traverses the Examiner's assertions with regard to well-known use. Because of this traversal, the Examiner must support his finding with evidence, or withdraw the well-known determination.

Additionally, Applicant respectfully submits that the proposed combination of *Ellis* in view of *Hooper* is not obvious. For instance, one indicia of unobviousness recognized by the Federal Circuit and the USPTO pertains to the absence of a motivation to combine references. Page 12 of the Office Action offers the following reasoning for the combination:

Accordingly, it would have been obvious to one having ordinary skill in this art at the time of Applicant's invention to combine the systems of *Ellis* and *Hooper* in order to provide faster acquisition of programming.

Applicant respectfully disagrees, and believes that, at least in view of the disparate systems and problems to be solved in *Ellis* and *Hooper*, such a proposed combination is more likely the result of improper hindsight reasoning. Federal case law makes it clear that an obviousness analysis requires an "as a whole" assessment, which Applicant respectfully submits has not been performed in the instant case. Applying to the present application, one problem to address concerns the issue of failure to receive purchasable recordable media in a dependable manner. As described above, the background of *Ellis*

(paragraphs 0003 and 0004) explains that “it is difficult for users to later find and access such promotional materials subsequent to the original presentation of the promotional material” and “[T]o access information on the pay-per-view movie, the user may need to abandon the current search for the channel which may cause the user to lose track of the progress in the search.” *Ellis* appears to address these problems through the use of “media lists...in which media may be tagged, listed, and subsequently accessed.” (see Abstract) On the other hand, *Hooper* provides the following explanation of some deficiencies with conventional art in column 1, lines 38-45:

A major problem with known distribution systems for video services, such as broadcast or cable television is that the consumer has no control over program or time selection. Also, known video distribution systems are limited by predetermined channel allocations in the number of different videos that are available at any one time. And, most known video services are generally not interactive.

The Abstract of *Hooper* provides the following explanation of how *Hooper* addresses this problem:

In a system for distributing videos, a plurality of videos are stored on a mass storage device. Each video includes a plurality of frames of digitized video data for play-back on a viewing device. The system includes a memory buffer for storing a segment of a selected one of the videos. The segment includes a predetermined number of frames representing a predetermined time interval of the selected video. In addition, the memory buffer including a write pointer and a read pointer. Software controlled servers are provided for writing and reading video data of the selected video to and from the memory buffer, independently, at locations indicated by the write and read pointers to transfer the selected video to the viewing device.

Clearly *Ellis* and *Hooper* address distinct problems using distinct solutions. Through the proposed combination of *Ellis* in view of *Hooper*, Applicant is effectively being asked to

accept that one having ordinary skill in the art would have approached a problem, such as failure to receive purchasable recordable media (PRM) in a dependable manner, by combining such disparate systems and problems to be solved as described in *Ellis* and *Hooper*. Applicant respectfully submits that such a combination is improper for at least the reason that such an assessment fails to implement an “as a whole” inquiry, and ultimately, fails to provide a proper motivation to combine. For at least the above described reasons, Applicant respectfully submits that a *prima facie* case of obviousness has not been made, and thus Applicant respectfully request that the rejection to claims 35 and 71 be withdrawn.

#### **Claims 36 and 72**

With regard to the finding of well-known art and Official Notice, Applicant respectfully traverses these findings and submits that the subject matter pertaining to these claims should not be considered well-known. There is no suggestion or teachings of portable medium drives in *Ellis* or *Greenwood*. For instance, *Ellis* is concerned with “building media lists...in which media may be tagged, listed, and subsequently accessed,” (see Abstract) and thus is simply not directed to the features of claims network scheduling or alerting users as to completion of downloads. *Greenwood* is concerned with a “video distribution management system” that “utilizes a shared video library and a wide area network to deliver video files to local caches on the local area networks serving a subset of local viewing stations.” (see Abstract) The reference to *Hassell et al.* (*Hassell*, U.S. Patent Publication No. 2004/0128685) on page 13 of the Office Action is of no relevance for at least the reason that *Hassell* post-dates the filing date of the present application by approximately two years. Applicant respectfully submits that in the context of the claim

language, such a finding of well-known art is improper given the reasons above, including the added complexity associated with such features as described in claims 36 and 72. Accordingly, Applicant traverses the Examiner's assertions with regard to well-known use. Because of this traversal, the Examiner must support his finding with evidence, or withdraw the well-known determination.

Additionally, Applicant respectfully submits that the proposed combination of *Ellis* in view of *Greenwood* is not obvious. For instance, one indicia of unobviousness recognized by the Federal Circuit and the USPTO pertains to the absence of a motivation to combine references. Page 13 of the Office Action offers the following reasoning for the combination:

Accordingly, it would have been obvious to one having ordinary skill in this art at the time of Applicant's invention to combine the systems of *Ellis* and *Greenwood* in order to provide a more bandwidth efficient system.

Applicant respectfully disagrees, and believes that, at least in view of the disparate systems and problems to be solved in *Ellis* and *Hooper*, such a proposed combination is more likely the result of improper hindsight reasoning. Federal case law makes it clear that an obviousness analysis requires an "as a whole" assessment, which Applicant respectfully submits has not been performed in the instant case. Applying to the present application, one problem to address concerns the issue of failure to receive purchasable recordable media in a dependable manner. As described above, the background of *Ellis* (paragraphs 0003 and 0004) provides that "it is difficult for users to later find and access such promotional materials subsequent to the original presentation of the promotional material" and "[T]o access information on the pay-per-view movie, the user may need to

abandon the current search for the channel which may cause the user to lose track of the progress in the search.” *Ellis* appears to address this problem through the use of “media lists...in which media may be tagged, listed, and subsequently accessed.” (see Abstract) On the other hand, *Greenwood* provides the following explanation of some deficiencies with conventional art in column 1, lines 15-30:

Multimedia distribution systems have remained local area network systems (LANs) due to the lack of an available distributed multimedia infrastructure. In existing wide area networks (WANs), the available bandwidth is insufficient to support remote playback of video files, particularly in view of network-related problems such as network latency, jitter and limited throughput. As a result, a typical solution is to maintain large libraries of video files in a large number of geographically dispersed locations in order to provide reasonably rapid access for widely disbursed users. The cost of creation and maintenance of such multiple video libraries, along with the local distribution facilities, is often prohibitive for most users. In addition to the prohibitive cost, the difficulty in scheduling viewing and managing the local distribution of such videos makes video distribution systems rare and inefficient.

As provided above, *Greenwood* is concerned with a “video distribution management system” that “utilizes a shared video library and a wide area network to deliver video files to local caches on the local area networks serving a subset of local viewing stations.” (see Abstract) Clearly *Ellis* and *Greenwood* address distinct problems using distinct solutions. Through the proposed combination of *Ellis* in view of *Greenwood*, Applicant is effectively being asked to accept that one having ordinary skill in the art would have approached a problem, such as failure to receive purchasable recordable media in a dependable manner, by combining such disparate systems and problems to be solved as described in *Ellis* and *Greenwood*. Applicant respectfully submits that such a combination is improper for at least the reason that such an assessment fails to implement



an “as a whole” inquiry, and ultimately, fails to provide a proper motivation to combine. For at least the above described reasons, Applicant respectfully submits that a *prima facie* case of obviousness has not been made, and thus Applicant respectfully request that the rejection to claims 36 and 72 be withdrawn.

In summary, it is Applicants’ position that a *prima facie* for obviousness has not been made against Applicants’ claims. Therefore, it is respectfully submitted that each of these claims is patentable over the art of record and that the rejection of these claims should be withdrawn.

**CONCLUSION**

Applicant respectfully submits that Applicant's pending claims are in condition for allowance. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested. Any other statements in the Office Action that are not explicitly addressed herein are not intended to be admitted. In addition, any and all findings of inherency are traversed as not having been shown to be necessarily present. Furthermore, any and all findings of well-known art and official notice, and similarly interpreted statements, should not be considered well known since the Office Action does not include specific factual findings predicated on sound technical and scientific reasoning to support such conclusions. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned attorney at (770) 933-9500.

Respectfully submitted,



---

David Rodack  
Registration No. 47,034

**THOMAS, KAYDEN,  
HORSTEMEYER & RISLEY, L.L.P.**  
Suite 1750  
100 Galleria Parkway N.W.  
Atlanta, Georgia 30339  
(770) 933-9500